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June 26, 2003

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VIA ELECTRONIC DELIVERY

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: Written *Ex Parte* Presentation of Nextel Communications, Inc.
CC Docket No. 01-92

PHILADELPHIA

NEW YORK

LOS ANGELES

SAN FRANCISCO

PRINCETON

FLORHAM PARK

BERWYN

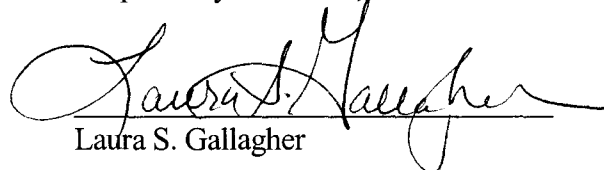
WILMINGTON

Dear Ms. Dortch:

Today, the attached documents were provided to Tamara Preiss, Steve Morris, Victoria Schlesinger, and Jay Atkinson of the Wireline Competition Bureau, and to Stacy Jordan, and Peter Trachtenberg of the Wireless Telecommunications Bureau, via electronic mail.

In accordance with the Section 1.1206(b)(1) of the Federal Communications Commission's rules, one copy of this letter is being filed electronically in the above-captioned docket. Copies of this letter are also being provided to the Commission staff listed below. Please contact the undersigned if any questions arise in connection with this filing.

Respectfully submitted,



Laura S. Gallagher

Counsel for Nextel Communications, Inc.

Enclosure

cc (w/encl.) Tamara Preiss, Federal Communications Commission
Steve Morris, Federal Communications Commission
Victoria Schlesinger, Federal Communications Commission
Jay Atkinson, Federal Communications Commission
Stacy Jordan, Federal Communications Commission
Peter Trachtenberg, Federal Communications Commission
Robert H. McNamara, Senior Counsel – Regulatory, Nextel
Communications, Inc. ("Nextel")

Robert Edgerly, Senior Manager, Interconnection and Design, Nextel
Garnet Goins, Senior Manager, Nextel

Gallagher, Laura S.

From: Gallagher, Laura S.
Sent: Thursday, June 26, 2003 11:21 AM
To: Victoria Schlesinger (VSCHLESI@fcc.gov); 'tpreiss@fcc.gov'; 'sfmorris@fcc.gov'; 'jatinso@fcc.gov'; 'stjordan@fcc.gov'; 'trachte@fcc.gov'
Subject: State Wireless Termination Tariff Decisions -- CC Docket No. 01-92



Colorado.pdf (154 KB)



Washington.pdf (314 KB)

All,

I have attached two recent and conflicting state commission decisions on CenturyTel's unilateral wireless termination tariff filings. Both tariffs set the same non-reciprocal, non-cost based rate for intraMTA mobile-to-land traffic at \$0.02447.

Recognizing the question of lawfulness raised by the CenturyTel tariff filing, the Public Utilities Commission of Colorado ("Colorado Commission") suspended the effective date of the CenturyTel tariff on May 28, 2003, and set the tariff for hearing before an Administrative Law Judge in September, 2003.

On that same date, the Washington Utilities and Transportation Commission ("WUTC") Staff recommended that the WUTC "Take No Action" on the CenturyTel tariff thereby allowing the tariff to become effective on June 1, 2003, as filed. Despite having "many of the same concerns" as the wireless carriers over the lawfulness of the CenturyTel tariff, and despite acknowledging that "CenturyTel does not commit to pay reciprocal compensation through its proposed tariff for the traffic that it terminates on a wireless carrier," the staff nonetheless recommended that the WUTC allow the tariff to go into effect.

These two contrary state commission decisions on the same CenturyTel tariff filing demonstrate the need for Commission action on specific pending issues in the above-referenced docket related to CMRS-ILEC interconnection, including, but not limited to, the T-Mobile/Nextel petition for declaratory ruling requesting the Commission to declare unlawful wireless termination tariffs filed by rural ILECs. Indeed, the Communications Act of 1934, as amended, provides the Commission with jurisdiction over all CMRS-ILEC interconnection matters, including the lawfulness of wireless termination tariffs. As such, states must not be permitted to allow these tariffs to go into effect as a substitute for "forward-looking" reciprocal compensation rates for intra-MTA traffic.

Please do not hesitate to contact me if you have any questions with the attached documents.

Respectfully submitted,

Laura Gallagher
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Washington, DC 20005
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laura.gallagher@dbr.com

Agenda Date: May 28, 2003
Item Number: A1

Docket: UT-030492
Company: CenturyTel of Washington, Inc.

Staff: Tim Zawislak, Telecommunications Regulatory Analyst
David Dittmore, Telecommunications Engineer
Tom Wilson, Telecommunications Analyst
Glenn Blackmon, Assistant Director - Telecommunications

Recommendation:

Take No Action thereby allowing the Tariff in Docket UT-030492 to become effective on June 1, 2003, as filed.

Background:

On April 9, 2003, CenturyTel of Washington, Inc., (CenturyTel) filed a new tariff increasing termination rates for Wireless Local Termination, for those carriers who do not have an interconnection agreement with the company.

On April 18, 2003, CenturyTel filed replacement sheets to request the extended effective date of June 1, 2003, in order to address Staff's concern that the company had not yet notified¹ the affected wireless carriers of the increased charges.

CenturyTel proposes to charge the following prices, effective June 1, 2003:

Wireless Terminating Access Rate	\$0.02447
(per minute of use)	
Service Establishment Charge	\$136.00
(per occurrence)	

¹ The customer notice that was sent out to the wireless carriers is included as Attachment 1. Additionally, the comparable rate page from CenturyTel's standard offer agreement that was appended to the customer notice is included as Attachment 2.

Comments Received from Wireless Providers

On May 7, 2003, Verizon Wireless, United States Cellular, and T-Mobile USA, Inc., (collectively the initial "Protesting Carriers") filed comments protesting CenturyTel's proposed tariff and strongly urging rejection of this filing due to both legal and policy considerations, as outlined below:

1. The tariff violates the 1996 Act's obligations to negotiate interconnection agreements.
2. The FCC is studying the validity of wireless termination tariffs; therefore approval of a state tariff would be inappropriate.
3. The CenturyTel tariff violates the requirement that rates for interconnection be based on cost.
4. The CenturyTel tariff violates federal law on reciprocity.
5. As a matter of public policy, this tariff should be rejected as it provides an unfair advantage to incumbent local exchange carriers in the interconnection process.

On May 19, 2003, AT&T Wireless Services, Inc. and Western Wireless Corporation (collectively the "Joint Wireless Carriers") also filed comments further alleging that the proposed tariff is illegal, excessive, and discriminatory, and also strongly urging the Commission to reject this filing.

CenturyTel's Response

On May 21, 2003, CenturyTel filed written comments responding to both the Protesting Carriers and the Joint Wireless Carriers. CenturyTel makes the following points with regard to the other parties' criticisms:

- A. The proposed tariff does not circumvent the Act's obligations to negotiate interconnection agreements because the tariff only applies in the *absence* of an interconnection agreement.

- B. The Commission's authority in this situation is not preempted.
- C. The proposed tariff does not preclude reciprocity.
- D. The rates in the proposed tariff are cost based.

CenturyTel's written response comments include more details on each point as well, however the points made have been summarized here for brevity.

Staff Analysis

Although Staff initially had many of the same concerns listed above by the wireless companies, further review of the tariff and reflection upon CenturyTel's and interveners' comments provide a useful understanding of the context in which this tariff is proposed.

The Commission should be aware that intercarrier compensation is an issue that the FCC has been formally wrestling with for over two years now, in CC Docket No. 01-92; and the issue of wireless termination tariffs is a subset issue that the FCC has entertained in the same docket and received comments on last fall. Staff is not aware of any new FCC ruling on either issue, yet.

To address the concern that the tariff is meant to apply in lieu of an interconnection agreement, the tariff at page 1, section B.5., clarifies that it only applies if there is a lack of an interconnection or a terminating traffic agreement approved by the Commission. Therefore, CenturyTel has not refused to negotiate, but rather has proposed to establish a tariff which would apply in the event a wireless company casually originates or terminates traffic, not otherwise subject to an agreement between the parties.

The mere fact that the FCC is studying the issue is evidence that the issue of having a tariff for this type of traffic is currently feasible.² If the FCC later decides to rule against such tariffs it could presumably preempt CenturyTel's tariff.

² See: CenturyTel's responsive comments at page 5.

Regarding CenturyTel's proposed rates and the allegation that they are not based on cost, CenturyTel replies that they are based on cost even though the mark-up is higher than normally negotiated and/or arbitrated. The higher mark-up, CenturyTel argues, is associated with the difficulties related to wireless carriers who don't have interconnection agreements with the company. Furthermore, even though the proposed charges may appear high to wireless carriers who are used to interconnecting with Qwest and Verizon in Washington State, CenturyTel is a rural company and the rates it proposes are still much less than intrastate interexchange access charges applied to toll providers for some similar types of traffic, as indicated by the following table:

	<u>CenturyTel of WA</u>	<u>CenturyTel of Cowiche</u>
Intrastate Toll Terminating Access		
End Office Switching	\$0.007148	\$0.007148
Interim Universal Service – WECA Pooled	0.057540	0.057540
Traditional Universal Service – WECA Pooled	0.001520	0.001520
Interim Universal Service – Bill and Keep	<u>0.016851</u>	<u>0.076684</u>
	<u>\$0.083059</u>	<u>\$0.142892</u>

It is true that CenturyTel does not commit to pay reciprocal compensation through its proposed tariff for the traffic that it terminates on a wireless carrier on a casual basis (e.g. without an agreement in place). However, CenturyTel does invite the wireless carriers to negotiate, and arbitrate if necessary, this issue, as well as other interconnection issues. CenturyTel's position appears to be that too much compensation is better than not enough, especially when it is willing to agree to lower rates and reciprocity through negotiation. Staff understands CenturyTel's position to mean that this issue is relative to the situation and that the *de facto* Bill-and-Keep (or payment in kind) arrangement espoused by the wireless carriers has resulted in the same, yet inverse, uneven mismatch. Negotiations, if any, should be able to mitigate these concerns.

An example, of payment in kind vs. the proposed unilateral tariff mechanism reveals the potential relative impact:

Assume 10,000,000 minutes of use per month.

Also assume the following:

X = percent originating on wireline network (land to mobile) is 30%

Y = percent terminating on wireline network (mobile to land) is 70%

Z = total two-way usage is 100%.

Payment in Kind reciprocity is that the wireline carrier (in this case CenturyTel) terminates 7,000,000 minutes in exchange for the wireless carrier (in this case a carrier to which the proposed tariff would apply) terminating 3,000,000 minutes. At a cost of 2.5 cents per minute the wireline carrier would receive a value of \$75,000 in exchange for providing service with a value of \$175,000. The net loss to CenturyTel would be \$100,000 per month, per wireless carrier of this size.

However, under the unilateral tariff proposed, in the example above, the wireless carrier would have to actually pay \$175,000 per month for using CenturyTel's service and would have to terminate CenturyTel's originating traffic (with no compensation at an assumed value of \$75,000 per month). The total negative impact on the wireless provider, in this hypothetical, would be \$250,000 per month. If the wireless provider were able to negotiate a rate of \$0.007 that impact would drop significantly (down to only \$28,000) due to the lower cost of termination and the reciprocity that such an agreement would provide. Even at CenturyTel's standard offer of \$0.018 the impact would be mitigated down to approximately \$72,000 in this example.

Under either scenario one provider will lose more than the other, given the imbalanced traffic assumption. The relative bargaining positions of the carriers, the respective cost of termination, and the actual traffic experience all have the propensity to alter these results. The good news is that the carriers can negotiate, and arbitrate, interconnection issues, if necessary.

CenturyTel does have a duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications even though the wireless carriers may not have "requested" negotiations or arbitrations. A tariff

may be an effective way to meet this duty, while not precluding negotiations or arbitrations, as enabled by the Act. The Act also imposes the duty to negotiate in good faith, on all parties.

In light of the discussion above, CenturyTel's tariff should (as intended) also provide an incentive for the wireless carriers to negotiate and/or arbitrate interconnection and termination issues, where they may have been hesitant to do so in the past. If they do not, it may be an indication that the tariff is acceptable until the FCC affirmatively rules on the issue.

All in all, it appears that CenturyTel's filing is permissible under the law, even though not a perfect solution for all of the parties potentially affected. Additionally, by allowing the tariff, the Commission may not need to endorse it.

Conclusion

Staff recommends that the Commission take no action thereby allowing the tariff in Docket UT-030492 to become effective on June 1, 2003, as filed.

Attachments (2)

ATTACHMENT 1

April 28, 2003

Notice to Commercial Mobile Radio Service (CMRS) Providers:

CenturyTel of Washington, Inc., CenturyTel of Inter Island, Inc., and CenturyTel of Cowiche, Inc. (collectively "CenturyTel") have filed a tariff with the Washington Utilities and Transportation Commission that will apply for the provision of wireless IntraMTA local termination within CenturyTel operating territories. The requested effective date is June 1, 2003.

This tariff filing will not apply to CMRS Providers who have an Interconnection and Reciprocal Compensation Agreement ("Agreement") with CenturyTel.

For those CMRS Providers who do not have an Agreement with CenturyTel, a Wireless Terminating Rate of \$.02447 will apply for each local minute of use terminating on CenturyTel's network.

Commission approval is required and their final decision could result in higher or lower rates than the Company has proposed.

If you do not have an Agreement with CenturyTel, a template of CenturyTel's standard Interconnection and Reciprocal Compensation Agreement has been enclosed for your review. If you want to pursue negotiation of an Agreement, please send a *bona fide request* to the following address:

Jackie Phillips
Manager, Carrier Relations
PO Box 9901
805 Broadway
Vancouver, WA 98668
Tel: 360-905-6985
FAX: 360-905-6811
jackie.phillips@centurytel.com

If you would like to comment to the Commission on this proposal, it is important for you to do so now. Comments must be submitted in writing or presented in person at the Commission's open public meeting. If you have questions or you would like to be added to the mailing list for this case, you may contact the Washington Utilities and Transportation Commission at P.O. Box 47250, Olympia, WA 98504-7250; 1-800-562-6150; comments@wutc.wa.gov; or 360-664-3604(fax).

ATTACHMENT 2

2. LOCAL NETWORK USAGE RATES

- A. Transport and Termination Rate
Tandem/End Office Rate MOU: \$0.018

This rate is reciprocal and symmetrical for Local Traffic exchanged between CenturyTel and _____ and applies for all Local Traffic MOUs exchanged associated with a CenturyTel End Office.

- B. Transiting Rate
Rate applied per MOU: \$0.00852

This rate applies to all Local Traffic MOUs exchanged between _____ and an End Office of a non- CenturyTel Local provider through facilities of CenturyTel.

3. TRAFFIC FACTORS

- A. Traffic Factors:

30% Land to Mobile Traffic Factor

70% Mobile to Land Traffic Factor

100% Total 2-way Usage

The Traffic Factors describe the level of local usage originating from one Party and terminating to the other Party as a percentage of total 2-way local traffic exchanged between the Parties. For example, a Mobile to Land Traffic Factor of 70% would mean that, of total 2-way local MOUs exchanged between CenturyTel and _____, 70% originated from a _____ wireless end user customer and terminated to a CenturyTel end user customer. These factors are used to apportion flat rated Direct Interconnection Facilities between the Parties and may be used where needed as a billing surrogate for Local Network Usage. These factors are subject to change based upon mutually accepted traffic data as provided in Section 5.2. If factors are not updated semi-annually, the Parties shall use the last previously established factors.

- B. PLU: 100%

The Percent Local Usage (PLU) Factor describes the portion of Local Traffic exchanged between the Parties that is Local Traffic. This factor applies to both originating and terminating MOUs.

Decision No. C03-0582

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03S-228T

RE: THE INVESTIGATION AND SUSPENSION OF TARIFF SHEETS FILED BY
CENTURYTEL OF COLORADO, INC. AND CENTURYTEL OF EAGLE, INC., WITH
ADVICE LETTER NO. 03-03, AS AMENDED.

**ORDER SUSPENDING EFFECTIVE DATE
OF TARIFFS AND NOTICE OF HEARING**

Mailed Date: May 29, 2003

Adopted Date: May 28, 2003

IMPORTANT NOTICE: ANY PERSON DESIRING TO PARTICIPATE ONLY BY MAKING A STATEMENT MAY DO SO BY APPEARING AT THE HEARING. IF YOU DESIRE TO ASK QUESTIONS OF A WITNESS OR OTHERWISE PARTICIPATE AS A PARTY IN THIS RATE MATTER, YOU MUST REQUEST PERMISSION FROM THE COMMISSION TO BE AN INTERVENOR (EVEN IF YOU HAVE ALREADY FILED AN OBJECTION). ANYONE DESIRING TO INTERVENE MUST CAREFULLY FOLLOW THE LAW AND COMMISSION RULES FOR BECOMING AN INTERVENOR. FOR FURTHER INFORMATION ON HOW TO INTERVENE CALL (303) 894-2070 (PUC EXTERNAL AFFAIRS OFFICE).

I. BY THE COMMISSION

A. Statement

1. On April 2, 2003, CenturyTel of Colorado, Inc., and CenturyTel of Eagle, Inc. (CenturyTel), filed Advice Letter No. 03-03, (attached as Exhibit 1). On April 18, 2003, CenturyTel filed Advice Letter No. 03-03 amended (attached as Exhibit 2)

2. CenturyTel stated that the purpose of this filing is to introduce the provisioning of intraMTA termination service to wireless providers. CenturyTel requested that the tariffs accompanying Advice Letter No. 03-03 amended, which supercedes Advice Letter No. 03-03, become effective on 30 days' statutory notice or, in this instance, on June 3, 2003.

3. Under § 40-6-111(1), C.R.S., the Commission may, in its discretion, set the tariffs for hearing which will suspend their effective date for 120 days. Section 40-6-111(1), C.R.S., also provides that the Commission may, in its discretion, by separate order, suspend the effective date of the tariffs for an additional 90 days. Thus, the Commission has the power and authority to suspend the effective date of the tariffs for a maximum of 210 days or, in this docket, until December 30, 2003. If the Commission does not establish new rates before the expiration of the first suspension period of 120 days, or October 1, 2003, the tariffs filed by CenturyTel will become effective by operation of law. If the Commission further suspends, by separate order, the effective date of the tariffs for an additional 90 days, and if no new rates are established by the Commission on or before December 30, 2003, the tariffs filed by CenturyTel will become effective by operation of law.

B. Findings of Fact

4. The Commission will set the proposed tariffs for hearing and will suspend their effective date because the rates contained in the tariffs may be improper.

5. A pleading to intervene may be filed by any person, firm, or corporation desiring to be a party and fully participate in this proceeding, as ordered below. The filing of any other document protesting the tariffs shall not allow participation as an intervenor in this matter.

II. ORDER

A. The Commission Orders That:

1. The effective date of the tariffs filed by CenturyTel of Colorado, Inc., and CenturyTel of Eagle, Inc., on April 2, 2003, with Advice Letter No. 03-03, as superceded by

Advice Letter No. 03-03 amended filed April 18, 2003, is suspended for 120 days until October 1, 2003, or until further order of the Commission.

2. The tariffs filed by CenturyTel of Colorado, Inc., and CenturyTel of Eagle, Inc., with Advice Letter No. 03-03, as amended, will be set for hearing before an Administrative Law Judge for the Commission as follows:

DATE: September 19, 2003
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
1580 Logan Street, Office Level 2,
Denver, Colorado

3. Any person, firm, or corporation, including any who have previously filed a document protesting the proposed tariffs, who desire to intervene and participate as a party in this proceeding shall file a motion to intervene with the Commission within 30 days after the mailing date of this Decision, and shall serve a copy of the motion on CenturyTel of Colorado, Inc., and CenturyTel of Eagle, Inc.'s attorney of record.

4. CenturyTel of Colorado, Inc., and CenturyTel of Eagle, Inc., shall file with the Director of the Commission an original and three copies of all exhibits and direct testimonies, and shall effect service in accordance with Rule 7 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, on or before 60 days prior to the first day of hearing. Except upon timely motion and for good cause shown, or by stipulation of all parties and the Staff of the Commission, no other, different or additional exhibits, witnesses, or scope of witnesses' testimonies will be permitted to be offered by CenturyTel of Colorado, Inc., and CenturyTel of Eagle, Inc., in support of its direct case.

5. Intervenor (including Commission Staff) shall file with the Director of the Commission an original and three copies of all exhibits and testimonies, and shall effect service in accordance with Rule 7 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, on or before 20 days prior to the first day of hearing. Except upon timely motion and for good cause shown, or by stipulation of all parties, no other, different or additional exhibits, witnesses, or scope of witnesses' testimonies will be permitted to be offered by Intervenor (including Commission Staff) in support of its direct case.

6. All prehearing motions, of whatever nature, shall be filed on or before 20 days prior to the first day of hearing, and, except for good cause shown, no prehearing motion filed later will be considered.

7. This Order is effective on its Mailed Date.